2. abrasions over the left forehead, the left forearm and the left loin; and
3. a fracture of the lesser trochanter with a spiral fracture of the shaft of the left femur.

The said injuries had resulted in —

(a) shortening of the left lower limb by 3½ cm;
(b) at the left hip, marked restriction of movements;
(c) abduction restricted by 30 degrees and adduction by 20 degrees;
(d) no extension of the hip was possible;
(e) flexion of the hip was less than half the normal range;
(f) at the left knee, a 5 degree fixed flexion deformity, knee could only flex to 25 degrees: virtually a stiff knee;
(g) at the left ankle, marked restriction of movements — movements approximately a quarter of the normal range;
(h) superficial scars over the outer side of left hip and over left buttock area.

The plaintiff had great difficulty in walking and he was not able to squat. The plaintiff suffered stiffness of the hip, knee and ankle from which it is very unlikely that he will recover.

For the injuries sustained, the shortening of the left leg by 3½ cm and the sufferings as a result of the injuries I would award a global sum of $20,000 at 6% interest from date of issue of the writ to date of judgment.

Costs to the plaintiff.

Order accordingly.

Solicitors: *Jackson & Masacorale; Kong Yeam & Hassan.*

NEW SERENDAH RUBBER CO. LTD. v. COLLECTOR OF LAND REVENUE, KUALA LUMPUR

[O.C.J. (Mohamed Azmi J., Fong Ying Hong & V. K. Tharmalingam, assessors) March 13, 1981]

[Kuala Lumpur — Civil Application No. 6 of 1973]

Land Acquisition — Appeal against compensation award — Method of valuation examined — Land Acquisition Act 1960, s. 38(5).

Land Acquisition — Valuation — Post notification sale considered.

The present application arose out of an objection referred to this court by the Collector of Land Revenue under section 38(5) of the Land Acquisition Act 1960, against the award of compensation of the Collector. The land concerned was a rubber estate belonging to the applicant. It covers a total area of 1199 acres 2 roods and 15 poles and is situated in two administrative districts, with the result that the acquisition was done by two different Collectors. Although the whole of Serdang Estate had been acquired, the present application concerned the portion in the Kuala Lumpur District which measured 556 acres 3 roods 15 poles.

The applicant who also owned Connemara Estate claimed for compensation for severance on the ground that Connemara Estate and Serdang Estate though 8 miles apart were being run as one unit under one management and, as a result of the acquisition, the applicant alleged that there was an increase in the management costs of Connemara Estate.

The award pertaining to 556.92 acres of the Estate was at $2,425 per acre which totalled to $1,350,531.

The Government valuer, one Mr. Khong, valued Serdang Estate as a whole totalling 1199.670 acres. He divided the land acquired into 12 lots which, in turn were divided into sections, and gave them valuation according to age or clone of the rubber trees for each lot, and also according to whether it was a rear or road frontage land, based on the value of the 8 sales. After getting a figure of $2,517 per acre, he deducted 10% for size allowance, and after giving $200,000 for value of buildings on the acquired land, he arrived at the market value of $2,425 per acre. The Collector based his award entirely on Khong's valuation.

There was evidence of sale of West Country Estate in the neighbourhood which Mr. Khong did not consider as it was a post notification sale and also as the sale was known after he had submitted his report.

The applicant claimed $7,200 per acre based on a Revised Valuation Report of 1976. The court was asked to accept the proposition that on the relevant date, April 9, 1970, the acquired land situate between Kuala Lumpur and Kajang was comparable to Sale No. 6 (Sungei Way Estate) situated between Kuala Lumpur and Klang as it stood on January 11, 1965. Sungei Way Estate had an area of 1440.562 acres and was sold at $7,200 per acre.

Held: (1) all transactions must be relevant which can afford a fair criterion of the value of the property as at the date of notification, and post notification transactions must not be ignored altogether;

(2) a post notification sale can be comparable land provided it is part of the same land or similar land in the neighbourhood. Adjustment must be made as regards time factor, size difference and other relevant factors;

(3) the clone of the rubber trees in respect of the eight sales had not been taken into account although the clone of the land acquired was considered. This was fatal to the valuation since the eight sales were supposed to be comparable with the twelve artificial lots on the acquired land;

(4) on the evidence, the applicant had discharged the burden of showing that the Collector's award was inadequate and wrong on the ground that there was serious defect in the calculation of the plot by plot method of valuation;

(5) having regard to the sale of West Country Estate (with an area of 6,774 acres which was sold about 2 years 11 months after the relevant date of valuation) at $3,500 per acre, the value for Serdang should be $3,000 per acre as on April 9, 1970;

(6) the claim for severance should not be entertained as it was a fresh item which had never been claimed before the present application was heard.

Cases referred to:-

(1) *Asst. Development Officer* v. *Tayaballi Allibhoy Bohori* A.I.R. 1933 Bom. 361, 364.
(2) *Superintendent of Lands and Surveys Sarawak* v. *Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243, 247.
(3) *Nanyang Manufacturing Co.* v. *C.L.R. Johore* [1954] M.L.J. 69, 71.
(4) *Uttar Pradesh Government* v. *H.S. Gupta* 44 A.I.R. 1957 S.C. 202.

The following cases were also cited in argument: *Collector of Land Revenue* v. *Alagappa Chettiar* [1971] 1 M.L.J. 43; *State of Madras* v. *A.M. Nanjan* A.I.R. 1976 S.C. 651.

CIVIL APPLICATION.

S.D.K. Peddie for the applicant.

Dato' Wan Yahya bin Pawan Teh for the respondent.

Cur. Adv. Vult.

Mohamed Azmi J.: This application is an objection referred to this court by the Collector of Land Revenue, K.L., under section 38(5) of the Land Acquisition Act No. 34 of 1960, against the award of compensation of the Collector in respect of the compulsory acquisition by the Selangor State Government for the Ministry of Agriculture and Co-operative of a rubber estate known as Serdang Estate, of which the applicant is the registered owner. The Estate, which has a total area of 1199 acres 2 roods and 15 poles, is situated in two administrative districts, with the result that the acquisition is done by two different Collectors. The portion in the Mukim of Petaling in Kuala Lumpur District is 556 acres 3 roods 15 poles, and the remaining portion in the Mukim of Kajang in the Ulu Langat District is 642 acres 3 poles. Although the whole of Serdang Estate has been acquired, the present application is only in respect of the portion in Kuala Lumpur District. Both parties in this application have, however, agreed that whatever valuation arrived at by this court will also be applicable to the portion in Ulu Langat District, and that the applicant is not claiming for compensation for injurious affection or severance on account of the acquisition being done by two different Collectors. But the applicant, who is also the owner of Connemara Estate, is claiming for compensation for severance on the ground that Connemara Estate and Serdang Estate though eight miles apart were being run as one unit under one management and, as a result of the acquisition, it is alleged that there is an increase in the management costs of Connemara Estate, which has an area of 1,400 acres.

The Award of the Collector of Land Revenue, Kuala Lumpur, in this application pertaining to 556.92 acres of the Estate, i.e. the portion situated in the Mukim of Petaling, comprised in Grant Nos. 13634, 12560, 6417, 5490, 16235, 21658, 21218, 6415 and 8602 for Lots 5378, 3246, 2581, 1202, 5259, 5263, 5379, 2580 and 1698 respectively, and Entry Mukim Register Nos. 3838 Lot 920 and No. 3839 Lot 921, is $2,425 per acre. At the conclusion of his enquiry, the decision of the Collector made on November 11, 1971 reads as follows:

"I agree with the valuation submitted by the Valuation Officer as in (33)A PHTKL. September 9, 1969, as at $2,425 per acre and the total area affected is 556.920 acres. As such, I fix an award a total compensation of $1,350,531."

The valuation referred to in the Collector's decision consists of Exhibits R1 and R2 — valuation reports prepared by Mr. Khong Mun Keong (RW1), a Government Valuer attached to Valuation Department of the Treasury dated October 8, 1971. The valuation is made on the basis of Serdang Estate as a whole totalling 1199.670 acres. The opinion of the valuer reads:

"Having considered all the relevant factors, I am of the opinion that the market value of the above property under paragraph 2 of the first schedule of the Land Acquisition Act, 1960 as at April 9, 1970 is $2,425 per acre overall."

A notification under section 4 of the Land Acquisition Act that the land, i.e. the whole of Serdang Estate, was likely to be acquired was published in the Selangor Government *Gazette* on April 9, 1970. This was followed by a declaration of intended acquisition under section 8 of the Act which was published in the *Gazette* on April 8, 1971. Since the notification under section 8 was published within twelve months of section 4 notification, the relevant date of valuation in this case is April 9, 1970 in determining market value under the First Schedule of the Act. But, it is common ground that this case is not caught by the amendments to the First Schedule introduced by section 5 of the Land Acquisition (Amendment) Act, 1976 (Act A336).

In this application, it is not in dispute that it is for the owner of the land acquired to prove that the award of the Collector was inadequate. (See *Assistant Development Officer* v. *Tayaballi Allibhoy Bohori*[1] and *Superintendent of Lands and Surveys Sarawak* v. *Aik Hoe & Co. Ltd.*[2]). The first question for determination before the court therefore is: has the applicant discharged the onus of proof, on balance of probabilities in the evidence, that the award of $2,425 per acre was wrong or inadequate? If the award was wrong or inadequate, the second issue is: what was the proper market value of the land as on April 9, 1970?

On the first issue, I find the Collector's award is entirely based on Mr. Khong's valuation. In this case, although the respondent's Valuation Report consists of Exhibits R1, R2 and R3, and the valuation method used is supposed to be by way of comparable lands, it is clear from the evidence of Mr. Khong (RW1), the Government Valuer, that although the eight sales which he considered in Exhibit R1 (see Schedule I of the Valuation Report) are situated in the neighbourhood of the land acquired, none of them is in anyway comparable with the land acquired. As stated by Buhagiar J. in *Nanyang Manufacturing Co.* v. *C.L.R. Johore*[3] —

"I consider that the safest guide to determine the market value is evidence of sales of the same land or similar land in the neighbourhood, after making due allowance for all the circumstances."

In my view, the eight sales of small rubber holdings, all of which are between 3 and 4 acres in area except for one sale which is 11.112 acres, are no basis for comparison for the purpose of valuation of a rubber estate of more than 1,000 acres in area. If at all, the prices sold for these lands are merely consistent with Mr. Khong's testimony that after May 13 incident in 1969, the property market in general was depressed and that prices started to pick up again from 1971. Indeed, Mr. Khong admits in evidence that these eight sales are not comparable lands and that he used them for the purpose of his valuation in Exhibit R2 where the valuation was done on field by field, or plot-wise basis. Although Mr. Khong claimed the method of valuation in Exhibit R2 is his own invention, it was, *inter alia,* held in *Uttar Pradesh Government* v. *H.S. Gupta*[4] that "where in computing compensation for acquisition of an "Estate" outside the Municipal area, the High Court had given valid and weighty reasons for adopting the principle that the valuation should be on plot-wise rate though there were certain advantages in computing the value at the block rate where vast area of land was acquired. It was held by the Supreme Court that in the circumstances of the case, the proper mode of valuation

should be on plot-wise basis". What Mr. Khong had done in Exhibit R2 was to divide the land acquired into twelve lots which, in turn, were divided into sections, and gave them valuation according to age or clone of the rubber trees for each lot, and also according to whether it was a rear or road frontage land, based on the value of the eight sales in Exhibit R1. After getting a figure of $2,517 per acre, he deducted 10% for size allowance, and after giving $200,000 for value of buildings on the acquired land, he arrived at the market value of $2,425 per acre which is the amount awarded by the Collector. In my view, in the absence of sale of rubber estates in the neighbourhood, this method might have been useful. But in the present case, there is evidence of sale of West Country Estate (Exhibits R3 and R9) in the neighbourhood which Mr. Khong did not take into consideration, apparently because it was a post notification sale and also as the sale was only known after he had submitted his Report. Further, even if the plot-wise basis valuation is the proper method of valuation in the present case, Exhibit R2 is defective and unreliable, in that the clone of the rubber trees in respect of the eight sales in Exhibit R1 had not been taken into account, although the clone of the land acquired was considered. In my view, this is fatal to this method of valuation since the eight sales in Exhibit R1 are supposed to be comparable with the twelve artificial lots on the acquired land. Since Exhibit R2 is, in fact, the very basis of Mr. Khong's valuation, it cannot be said that the Collector's award of $2,425 per acre inclusive of compensation for buildings can be held to be the proper market value of the acquired land on the relevant date. Having regard to the evidence in this case, including the evidence of the applicant's Valuer, Mr. Lee Yoke San (AW2) as regards Mr. Khong's valuation, I find the applicant has discharged the burden of showing that the Collector's award is inadequate and wrong on the ground that there is serious defect in the calculation of the plot by plot method of valuation.

On the second issue, based on the original Valuation Report dated July 2, 1970 (Exhibit A1) prepared by the applicant's Valuer, Mr. Lee Yoke San (AW2), the market value of the acquired land was assessed at $8,000 per acre. But the applicant now claims $7,200 per acre based on a Revised Valuation Report of 1979 (Exhibit A2). In his evidence, Mr. Lee testified that his valuation was arrived at by comparison method and then cross-checked with Residual Method of Valuation. He took Sale No. 6 in Schedule X of Exhibit A2, as the cornerstone of his valuation, on the premise that although that land is not in the neighbourhood of the land acquired, it is comparable land having regard to its size and other alleged similarities. The court is particularly asked to accept the proposition that on the relevant date, i.e. April 9, 1970, the acquired land situated between Kuala Lumpur and Kajang was comparable to Sale No. 6 (Sungei Way Estate) situated between Kuala Lumpur and Klang as it stood on January 11, 1965. Sungei Way Estate which is now known as Subang Jaya, with an area of 1440.562 acres, was sold on January 11, 1965, at $7,200 per acre. Having regard to the evidence, I am of the view that it is wrong to take Sale No. 6 as the basis for the valuation of Serdang Estate. Apart from the complete differences in location, Sungei Way Estate was much more ripe for development in January 1965 as compared to the acquired land in April 1970. Whatever might be the year in the sixties and seventies, Sungei Way Estate was clearly situated in a more superior area as compared with Serdang Estate as far as development potential was concerned, notwithstanding the existence of the railway line separating it from the Federal Highway. Being situated along the railway line and Federal Highway between Kuala Lumpur and Port Klang, Sungei Way Estate in 1965 was in the path of intensive housing and industrial development, along the Klang Valley. Looking at Subang Jaya now, it is not difficult even for a layman to realize the high potential value of the land even in 1965. Indeed, before Sungei Way Estate was sold on January 11, 1965, application for conversion and sub-division of the Estate had already been submitted for housing and industrial development in 1964 (see Exhibits R10, R11, R12, R13 and R14); and by letter dated August 19, 1964 (see Exhibit R15), the Town Planning Authority had, in fact, indicated that after consulting the various technical departments, it had no objection to the application for conversion. Further, according to Exhibit R15, the application was favourably considered by the Klang Valley Regional Planning Committee. On the other hand, the land acquired is situated in the interior part of Kajang — an area which cannot be described as ripe for development as Sungei Way Estate was in January 1965. Apart from the agricultural usage, the only actual similarity is the size of both lands — Serdang Estate 1,199 acres and Sungei Way Estate 1,440 acres. The similarities end there. Although both were rubber estates, when Serdang Estate was acquired, it was a piece of agricultural property with building potential, whereas when Sungei Way was transacted at $7,200 per acre in January 1965, it was sold as agricultural land but with actual high density building potential. As regards access, from Exhibit A1A, there were three ways how one could go by road from Kuala Lumpur to Serdang Estate in April 1970. The first was through Kajang town; the second via Serdang which is referred to in the evidence as northern access and was about fourteen miles from Kuala Lumpur; and the third via Puchong which is referred to as southern access which was about seventeen miles from Kuala Lumpur. The most natural access is via Serdang — the northern access through MARDI land, which was once part of the Estate, but acquired by the Government in 1965 at $2,500 per acre with compensation at $500 per acre for injurious affection. As such, the shortest legal access from Kuala Lumpur is via Puchong by a narrow winding road. In 1970, development towards Serdang was not as attractive and concentrated as the Kuala Lumpur side of Klang Valley in 1964. In the circumstances, I would exclude Sale No. 6 for the purpose of valuation in the present case.

Having rejected both the valuation of Mr. Lee Yoke San (AW2) and Mr. Khong Mun Keong (RW1), I think the court is entitled to arrive at its own valuation based on the available evidence. In my view, the West Country Estate (Exhibit R9) offers the only

available similar land in the neighbourhood of the land acquired. Both are rubber estates located in the same neighbourhood as shown in the map marked as Schedule II in Mr. Khong's Valuation Report (Exhibit R1). As submitted by learned Legal Adviser Selangor for the respondent, although West Country Estate was a post notification sale, the transaction having taken place on March 3, 1973, it cannot be ignored and the court is entitled to make its own valuation. In *Aik Hoe & Co. Ltd.* case (*ante*), Suffian J. (as he then was) at page 247 adopted with approval the judgment of Broomfield J. in *Assistant Development Officer* v. *Tayaballi Allibhoy Bohori* (*ante*) at page 363 to the effect that all transactions must be relevant which can afford a fair criterion of the value of the property as at the date of notification, and post notification transactions must not be ignored altogether.

Thus, I am of the view that even a post notification sale can be comparable land provided it is part of the same land or similar land in the neighbourhood. West Country Estate with an area of 6,774 acres were sold about 2 years and 11 months after the relevant date of valuation at a price of $3,500 per acre. Adjustment must, of course, be made as regards time factor, size difference and other relevant factors.

The learned State Legal Adviser for the respondent submits that, if West Country Estate were to be the basis of valuation, there should be scaling down of 50% for the difference in time after giving 10% allowance for size. Although the property market was generally depressed after May 13 incident in 1969, it began to pick up again in 1971, and taking into account the various developments that had taken place in the neighbourhood between the relevant date and March 3, 1973, I do not think that the value of West Country Estate could only fetch about half of $3,500 in April 1970. Having regard to all the evidence, I think it is reasonable and more realistic to reduce the value by only 25%, so that if West Country Estate had been sold in April 1970 it would have fetched a market price of $2,635 per acre. Giving Serdang Estate 10% allowance for size, that figure would increase to around $2,894 per acre. As a round figure, I would value the acquired land at $3,000 per acre as on April 9, 1970.

As regards buildings on the land, I am of the view that by virtue of section 47(2) of the Land Acquisition Act, separate assessments should be made for land and buildings. Since the valuation of $200,000 made by the Government Valuer has not been challenged, I think it is fair that this valuation should be accepted as fair compensation for the buildings, on the basis that it is for the whole of Serdang Estate.

In so far as claim for severance is concerned, I find it is a fresh item which has never been claimed before this application was heard. As such, it should not be entertained. Further, Mr. Brown (AW1), the Director of applicant company, merely testified that as a result of the acquisition, there was an increase of management costs of Connemara Estate which was situated about eight miles away from the acquired land. But Mr. Brown did not give any specific figures of such increase, if any. In the circumstances, I find the applicant has failed to discharge the burden of proof under this item and the claim for severance must fail.

In this case, on land valuation, I agree with the opinion of one of the Assessors, Mr. Fong Ying Hong, but disagree with that of Mr. V.K. Tharmalingam.

Thus, in this application, I would enhance the Collector's award on market value of the land from $2,425 to $3,000 per acre. For the area of 556 acres 3 roods 15 poles (556.92 acres) in the Mukim of Petaling, I award a figure of $1,670,760. With regard to compensation for buildings on the land, I award the sum of $200,000 for the whole Estate.

Since both the original claim and the revised claim of the applicant exceed by 20% of the court award, I order that each party to pay its own costs.

As regards interest, I order that the applicant be paid interest at 6% per annum on $575 per acre from date of taking possession by the Collector to date of payment.

Under section 41(3) of the Act, I order that each of the Assessors be paid a fee of $500, and by consent this fee is to be borne equally by both parties.

I also order that the deposit of $1,000 be refunded to the applicant.

Order accordingly.

Solicitors: *Skrine & Co.*

RAMAKRISHNAN v. LEMBAGA LETRIK NEGARA, MALAYSIA

[O.C.J. (Arulanandom J.) April 16, 1981]
[Penang — Civil Suit No. 378 of 1976]

Torts — Negligence — Unfenced H-pole — Infant electrocuted when he climbed H-pole — Duty of care of undertaker — Electricity Regulations 1951, regs. 14(16), 16A(4) & 16C(5).

The plaintiff in this case was a ten-year old infant. On April 25, 1975 he climbed up a H-pole (erected and maintained by the defendants' predecessors) in an attempt to release a bird which was trapped on the wire of the pole. The plaintiff was electrocuted as he reached the bracket which supported the cable-box. He was thrown to the ground. He suffered severe injuries and first and second degree burns which resulted in scars and permanent disfiguring. According to medical report as age advances some degree of deformity was very likely, bent down to the chest with wry-neck twisting with the chin pointing to the right. Quantum at $34,000 was agreed by both parties. The only issue was as to liability.

Held: (1) liability should be determined by reference to the standard of care owed by an undertaker maintaining a highly electrical transmission system over the land of another to which the plaintiff and other children resorted;

(2) in the present case the defendants ought to have known that poles in unoccupied land especially H-poles will invariably tempt children to climb them, even if it was not for the purpose of releasing birds trapped on top of them and there was nothing to suggest that there was imminent peril in climbing them;

(3) the defendants had therefore not discharged their duty of care to others when installing and maintaining the H-pole;